

# SENATE MOTION

**MR. PRESIDENT:**

**I move** that Engrossed House Bill 1181 be amended to read as follows:

- 1       Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 2       "SECTION 1. IC 8-1-2-109 IS AMENDED TO READ AS
- 3       FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 109. A public utility
- 4       that violates this chapter, or fails to perform any duty enjoined upon it,
- 5       for which a penalty is not **provided by section 109.5 of this chapter**
- 6       **or** otherwise ~~provided by this article or IC 8-1.5~~, commits a Class B
- 7       infraction.
- 8       SECTION 2. IC 8-1-2-109.5 IS ADDED TO THE INDIANA CODE
- 9       AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 10      1, 2001]: **Sec. 109.5. (a) This section does not apply to either of the**
- 11      **following:**
- 12          **(1) The provision of commercial radio service (as defined in**
- 13          **47 U.S.C. 332).**
- 14          **(2) A corporation covered by IC 8-1-13 or IC 8-1-17.**
- 15      **(b) This section does not apply when the failure of the public**
- 16      **utility was caused by any of the following:**
- 17          **(1) Customer provided equipment.**
- 18          **(2) The negligent act of a customer.**
- 19          **(3) An emergency situation.**
- 20          **(4) An unavoidable casualty.**
- 21          **(5) An act of God.**
- 22          **(6) Circumstances beyond the control of the public utility.**
- 23      **(c) As used in this section, "public utility" includes the**
- 24      **department of public utilities created under IC 8-1-11.1.**
- 25      **(d) A public utility and every officer of a public utility shall**
- 26      **comply with every order or rule of the commission made under**
- 27      **authority of this article or IC 8-1.5 so long as the order or rule**
- 28      **remains in force.**
- 29      **(e) If the commission finds, after notice and hearing, that:**
- 30          **(1) a public utility has failed to meet a standard of service**
- 31          **established by commission rule;**

(2) a public utility has failed to comply with a rate or other service requirement of a final order of the commission; or

(3) a public utility that is a telecommunications provider (as defined in IC 8-1-29-3) has failed to comply with any other order of the commission made under this title;

the public utility shall pay to the state a civil penalty of not more than two thousand dollars (\$2,000) for each failure.

(f) Notwithstanding subsection (e), if the commission also finds that the public utility's failure demonstrates by a continuing pattern of conduct a willful disregard of the public utility's obligations under this title, the commission's rules, or the commission's orders, the public utility shall pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) for each failure.

(g) The commission shall consider the following when determining the appropriateness of the imposition or the amount of a civil penalty:

(1) The effect that the amount of the civil penalty will have in relation to the size of the public utility.

(2) The gravity of the violation or failure.

(3) The good faith of the public utility in attempting to remedy the failure or achieve compliance after receiving notification of the failure.

(4) If the public utility is a nonprofit company:

(A) the effect of the penalty on the company's members and their capitalization of the company; and

(B) whether the act or omission causing the failure had been approved or requested by the company's members.

In the order imposing the civil penalty, the commission must make specific findings with respect to the factors described in subdivisions (1) through (4).

(h) A public utility may not be subject to both a penalty under this section and an agreed penalty under a commission approved settlement agreement for the same failure. If the commission has approved a settlement agreement that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, civil penalties provided in this section may not be imposed for those failures during the lifetime of the settlement agreement.

SECTION 3. IC 8-1-2-115 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 115. The commission shall inquire into any neglect or violation of the statutes of ~~this state~~ **Indiana** or the ordinances of any city or town by any public utility doing business ~~therein~~, **in Indiana**, or by the officers, agents, or employees ~~thereof~~, **of the public utility** or by any person operating the plant of any public utility, and shall have the power, and it shall be **the commission's** duty, to enforce the provisions of this chapter, as well as all other laws, relating to public utilities. ~~Any forfeiture or penalty~~

provided in this chapter shall be recovered and suit therein shall be brought in the name of the state of Indiana in the circuit or superior court where the public utility has its principal place of business. Complaint for the collection of any such forfeiture may be made by the commission or any member thereof; and, when so made, the action so commenced shall be prosecuted by the general counsel.

SECTION 4. IC 8-1-2-115.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 115.5. (a) At the direction of the commission, the attorney general shall bring an action to:**

**(1) obtain a judgment as provided in section 109 of this chapter;**

**(2) enforce a civil penalty imposed by the commission under section 109.5 of this chapter; or**

**(3) recover any other forfeiture or penalty provided in this chapter.**

**(b) The attorney general shall bring the action in Marion County in a court that has jurisdiction.**

**(c) In an action under this section, the attorney general may recover any of the following:**

**(1) The amount of a judgment, forfeiture, civil penalty, or other penalty.**

**(2) The attorney general's reasonable costs in maintaining the action.**

**(3) Reasonable attorney's fees.**

**(4) Costs of the action."**

Delete page 2.

Page 3, delete lines 1 through 16.

Re-number all SECTIONS consecutively.

(Reference is to EHB 1181 as printed April 6, 2001.)

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Senator CLARK